

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
TAYLOR CUSTOM HOMES, INC.,
dba J & D EXCAVATING,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 83-188

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violations of Sections 8.02(4), 8.02(5), and 8.06(3) of Regulation I, came before the Pollution Control Hearings Board, Gayle Rothrock, Chairman, Lawrence J. Faulk (presiding) and David Akana at an informal hearing on October 31, 1983, in Lacey.

Appellant represented himself; respondent was represented by its attorney, Keith D. McGoffin. The proceedings were electronically recorded.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Appellant, J & D Excavating, a subsidiary of Taylor Custom Homes,
5 Inc., is a demolition contractor operating in the State of Washington.

6 II

7 On June 28, 1983, an employee of appellant applied for an outdoor
8 burn permit from the fire department. The permit was disapproved on
9 July 7, 1983, because the population density of the proposed burn site
10 exceeded PSAPCA standards for safe, controlled outdoor burning and
11 stamped across its face was "Burning Prohibited."¹

12 III

13 On July 26, 1983, at approximately 12:15 a.m., respondent's
14 inspector was drawn to 17809-76th Avenue West, Edmonds, Washington by
15 a telephone call from an official of the Edmonds Fire Department.

16 The respondent's inspector observed a land clearing fire started
17 by appellant's employee. It was 20 feet by 10 feet made up of natural
18 vegetation and material that appeared to be from a demolished house.

19 IV

20 Respondent's inspector talked to the appellant at the site. The
21 inspector explained article 8, of respondent's Regulation I to
22 appellant and indicated a notice of violation would be issued.
23 Appellant showed the inspector the plot plan of the site and explained

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25 1. The employee no longer works for the appellant.

1 the work to be done. The inspector saw that a house was noted on the
2 plot plan. The inspector asked appellant about the house. Appellant
3 told the inspector it was in the burning pile.

4 An official of the Edmonds Fire Department also was at the scene
5 of the fire on July 26, 1983, to view the fire and determine if
6 appellant had a burning permit. Appellant indicated J & D Excavating
7 had applied to the fire department for a permit and, to the best of
8 his knowledge had obtained a permit, although he didn't have it at the
9 job site.

10 Appellant stated that the Edmonds Fire Department expressed to J &
11 D Excavating that such a burn would be allowed if he obtained an
12 approval from respondent PSAPCA. Appellant also indicated that he had
13 verbal approval to conduct burning from the Edmonds Fire Chief.

14 The evidence presented does not show respondent PSAPCA or the City
15 of Edmonds Fire Department issued written or verbal approval of the
16 fire in question.

17 V

18 On July 27, 1983, respondent's inspector mailed notice of
19 violation No. 19784 to appellant's office. From this notice followed,
20 on September 20, 1983, a civil penalty of \$250 for the alleged
21 violation.

22 Civil penalty No. 5829 is for alleged violation of Sections
23 8.02(4) and 8.02(5) and 8.06(3) of Regulation I.

24 From this notice of violation and civil penalty appellant appealed
25 to this Board on September 28, 1983.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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VI

pursuant to RCW 43.21B.260, respondent has filed with this Board a certified copy of its Regulation I and amendments thereto, which are noticed.

Section 8.02(4) prohibits an outdoor fire for purpose of demolition of materials.

Section 8.02(5) makes it unlawful for any person to cause or allow any outdoor fire in violation of any applicable law, rule or regulation of any governmental agency having jurisdiction over such a fire.

Section 8.06(3) makes it unlawful for any person to cause or allow any outdoor fire for land clearing burning within the urbanized area as defined by the United States Bureau of The Census unless respondent has verified that the average population density on the land within 0.6 miles of the proposed burning site is 2,500 person per square mile or less.

Section 8.29 provides for a penalty of up to \$250 per day for each violation of Regulation I.

VII

Appellant has no previous violations of Regulation I.

VIII

Any Conclusion of Law which should be deemed a finding of fact is hereby adopted as such.

From these Findings the Board comes to these

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
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1 CONCLUSIONS OF LAW

2 I

3 An outdoor fire to dispose of natural vegetation and a demolished
4 house did occur at 17809-76th Avenue West, Edmonds, Washington on July
5 26, 1983, without the approval of the respondent.

6 II

7 Appellant's belief that J & D Excavating had permission to burn at
8 that site is not supported by the facts presented.

9 III

10 A portion of the penalty should be suspended because appellant has
11 no previous violations of Regulation I and he, regrettably, believed
12 an employee's representation that the company had permission to burn.

13 IV

14 Appellant did violate Sections 8.02(4), 8.02(5), and 8.06(3) as
15 alleged.

16 V

17 Any Finding of Fact which should be deemed a Conclusion of Law is
18 hereby adopted as such.

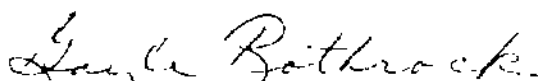
19 From these Conclusions the Board enters this
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ORDER

The notice of violation and \$250 civil penalty is affirmed; provided, however, that \$100 of the penalty is suspended on condition that appellant not violate respondent's Regulation I for a period of one year after this Order becomes final.


DATED this 5TH day of December, 1983.


LARRY FAULK, Member


GAYLE ROTHROCK, Chairman

CONCURRING OPINION: DAVID AKANA

I concur with the result.


DAVID AKANA, Lawyer Member

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